
In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF CITY OF CONCORD NORTH CAROLINA

These Comments are filed by Concord in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Concord believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

Concord is a city with a population of 62,300. Our franchised cable provider is Time Warner. Our community has negotiated cable franchises since 1978.

Our Current Franchise

Our current franchise began on October 10, 1997 and expires on October 10, 2007. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the city in the amount of 5 % of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 1 channels (or capacity) devoted to public access; 1 channels (or capacity) devoted to educational access; and 1 channels (or capacity) devoted to government access.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. Monitor Grantee's process for handling citizen complaints and periodically inspect and analyze the records related to such complaints; Monitor grantee's adherence to operational standards, service requirements and line extension policies; Assure continuity in service.

Our franchise requires that the cable operator currently provide service to the following areas of our community and reasonable build schedule: Franchise will offer service to all current locations within the city limits and extend into new areas where a 20 customer per mile density is located. Areas with lower density may receive service on a cost sharing agreement with the franchisee.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: Our franchisee was required to upgrade their infrastructure to 750 MHz within 7 years of the issuance of the franchise.

Our franchise contains the following insurance and bonding requirements: Performance Bond, General Liability Insurance, Automobile Liability Insurance, Worker's Compensation and Employer's Liability Insurance.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider may access the public rights of way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: Right to inspect income records, right to audit, right to re-compute amounts payable under the ordinance, right to inspect construction or installation work in public rights-of-ways, rights to inspect property, right to intervene in any law suit or proceeding, right to require removal of property in any public right-of-way, right to require any expense reimbursements.

The Franchising Process

The cable system(s) serving our community also serves many adjoining communities: Kannapolis, Harrisburg, Mount Pleasant and Cabarrus County. In 1997 our community worked together with approximately one other community to issue a cable franchise for the Time Warner cable company. This allowed the company to quickly obtain franchises in these communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process - to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: Our ordinance relates to changes in the Communications Policy Act or Cable Act as they may be amended or succeeded from time to time.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local

government. For instance contracts are reviewed by City Attorneys and departments who are affected by the franchise. Following the contract routing process the contract is reviewed by the City Manager and the City Council. A public hearing would be held on the franchise agreement. According to N.C. statutes the public hearing is duly advertised prior to the City Council meeting. Public hearings are held at regularly scheduled City Council meetings at 7 p.m.

Competitive Cable Systems

Our community

- has actively sought out competitive providers, but has not been successful.
- has not denied any provider the opportunity to serve in our community.
- does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

Conclusions

The local cable franchising process functions well in Concord. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Concord therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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***Per your request we have forwarded these comments to the other governments named in these comments: Cabarrus County, City of Kannapolis, City of Harrisburg and the Town of Mt. Pleasant.